



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/195,791	11/17/1998	MOHAMED K. DIAB	MASIMO.7CP1C	4687
7590	09/19/2005		EXAMINER	
KNOBBE MARTENS OLSON & BEAR 620 NEWPORT CENTER DRIVE SIXTEENTH FLOOR NEWPORT BEACH, CA 92660			WINAKUR, ERIC FRANK	
			ART UNIT	PAPER NUMBER
			3736	
DATE MAILED: 09/19/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

S9

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/195,791	DIAB ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Eric F. Winakur	3736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 15-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 15-26 is/are allowed.
- 6) Claim(s) \_\_\_\_\_ is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>6/20 &amp; 8/31/05</u> . | 6) <input type="checkbox"/> Other: _____  |

1. Applicant's Information Disclosure Statements filed 20 June 2005 and 31 August 2005 have been reviewed. The claims remain allowable over the prior art. The prior art teaches methods and apparatus for measuring saturation of a blood constituent in a patient including irradiating a patient with two wavelenghts and detecting light that has passed through the patient, wherein the detected light includes a motion component. However, the prior art does not teach or suggest an apparatus or method for determining the saturation by generating a plurality of data packets from detected optical measurement signals at two wavelengths, and using a mathematical relationship relating first and second portions of the measured signals at both wavelengths and a ratio of the first portion of the signals at both wavelengths to generate at least first and second functions from the data packets, wherein the first and second functions have a final solution value indicative of the ratio.

2. This application is in condition for allowance except for the following formal matters:

While the potential interference with USPN 5,687,722 remains relevant to prosecution of the instant application, Applicant is hereby advised that new rules (see 37 CFR § 41.202 - 41.208, effective 13 September 2004) govern interference proceedings.

Applicant's previous submissions including the Request for Interference filed 17 November 1998 are noted. Applicant is requested to review their previous submissions and provide any additional submissions they deem necessary to conform with the new rules in response to this action [see in particular 37 CFR § 41.202 (a)(1)-(6) and 37 CFR

§ 41.202 (d)(1)-(2) and (e)(1)-(2)]. At a minimum, Applicant must indicate where the previous filings meet the new rules; however, if additional submissions are necessary to meet some requirements of the new rules, it is preferable for Applicant to submit all of the required information in a single filing.

Applicant's attention is drawn to 37 CFR § 41.202(d)(1)-(2) and 37 CFR § 41.204. Submissions provided after the interference has been forwarded to the board may not be considered timely.

Prosecution on the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

A shortened statutory period for reply to this action is set to expire **TWO MONTHS** from the mailing date of this letter.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric F. Winakur whose telephone number is 571/272-4736. The examiner can normally be reached on M-Th, 7:30-5; alternate Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eleni Mantis-Mercader can be reached on 571/272-4740. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Eric F Winakur  
Primary Examiner  
Art Unit 3736

16 September 2005